

**STATEMENT OF SENATOR SAM BROWNBACK**  
**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**  
**PROTECTING CONTENT IN A DIGITAL AGE ---**  
**PROMOTING BROADBAND AND THE TRANSITION TO DIGITAL TELEVISION**  
**February 28, 2002**

Today's hearing is intended to establish that if the federal government would mandate a catch-all copy protection framework content producers would be willing to make their content available over the Internet, flooding consumers with digital content and creating the killer application that would drive increased broadband subscribership. In addition, this catch-all framework would cover over-the-air digital broadcasts, giving the broadcast industry the copy protection certainty it needs to make the digital TV transition a success.

As a Member of this Committee and the Foreign Relations Committee B which has recently reviewed this issue -- as well as the Judiciary Committee, which has jurisdiction over U.S. copyright law, I support the rights of copyright holders to protect their investments from piracy. I especially embrace copy protection in the face of bad-actors who dump copyrighted works onto peer-to-peer file-sharing networks. Law enforcement can and should deal with those who do not play by the rules. While I do believe government has a role to play in the development of a converged digital environment, I would be extremely hesitant regarding any proposal for government to mandate copy protection technology. I am comfortable, at least for now, relying on existing law to address copy protection issues raised by the onset of digital convergence and the use of content by law abiding consumers in their own homes.

Today, movie studios have created Web portals such as Intertainer.com and CinemaNow.com and are offering encrypted movies for consumers to purchase and download over the Internet. I would further point out that digital broadcast content is available via digital satellite television services today. These developments have occurred under existing law and through industry negotiation, not through government mandates. AOL-Time Warner, owner of the largest content library in the world, wanted to testify in opposition to additional federal copy protection regulations at today's hearing, but was not allowed.

I strongly believe that the lack of demand for broadband services is far less about the existence of a uniform copy protection framework, and far more about the quality of existing broadband services. While bandwidth intensive content is clearly available today, existing broadband services are quite simply not robust enough to permit consumers to take advantage of such content. Few consumers, as the market is baring out, will pay for a service that still takes hours to download legally purchased movies.

The cable industry has upgraded the vast majority of its lines to provide robust digital

capacity to subscriber homes, but uses only a very small slice of that capacity for broadband Internet access. Instead of opening the broadband floodgates, cable executives seem more interested in finding ways to prevent their own broadband Internet service from competing with their core video business. By keeping its Internet pipe narrow, the cable industry is clearly achieving that goal.

On that note, it is fitting that today's hearing comes less than 24 hours after the House of Representatives overwhelmingly passed the Tauzin-Dingell broadband deregulation bill. That bill seeks to create robust competition in the broadband marketplace by freeing up local phone companies from certain network-sharing regulations in the broadband market. Deregulation will place phone companies on a level playing field with the cable industry, providing incentives for phone companies to deploy broadband systems that not only provide a super fast Internet connection, but have the added benefit of enabling them to compete with cable companies in the multichannel video market by providing consumers with a direct link to content providers. This competition would in turn force the cable industry to release its stranglehold on that market, and open the floodgates on its own Internet pipes. One only has to look as far as the always evolving and highly competitive wireless industry to witness the benefits of deregulation.

I have introduced my own version of broadband deregulation legislation that shares the same goals, yet is quite different from the Tauzin-Dingell bill. It does not provide across the board deregulation of local telephone last mile facilities nor long distance data services. S. 1126, the Broadband Deployment and Competition Enhancement Act of 2001, deregulates only those *additions* to the telephone network that make broadband services possible over existing phone lines. Most importantly, the bill deregulates certain maximum-capacity facilities C facilities that do not exist in the telephone marketplace today, therefore are not being used by competitors C which meets the high-tech industry's call for a 100 Megabit per second system deployed to every home in America. This is the type of capacity needed to make Internet access to digital video a true broadband killer application, and will create strong consumer demand for broadband services that can actually make accessing digital video online a practical exercise.

I realize that not everyone shares my views on this issue. All I ask is that my colleagues read the bill and make a fair and objective assessment. Even those who will always oppose telephone last mile deregulation should support this bill. It's their big chance to prove that incumbent phone companies are simply seeking deregulation to prevent competition. You see, my bill strips phone companies of broadband deregulation if they interfere with competitors' equipment collocation rights or access to existing telephone lines connected to homes. The very facilities the FCC reported yesterday competitive companies have used to increase their share of the broadband market by 16% over the past year. Those who are market-oriented like myself should support this bill because we realize that government is no substitute for the market. We cannot manufacture a competitive industry, nor is it our place to guarantee any company success in the marketplace. All we can do is ensure they have the *opportunity* to compete, and my bill guarantees such an opportunity.

I look forward to more detailed discussions about my legislation and the broadband

marketplace later this year, and it is my intention that there be such a debate C regardless of whatever environment needs to be created to bring it on forward.